IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3081 OF 2007

Santaji Hanmantrao Ghorpade ...Petitioner

Versus

Satyashodak Sahakari Bank Ltd. ...Respondent

Shri S.R.Gonbavale for the Petitioner.

CORAM : ABHAY S.OKA, J.
DATED : JUNE 26, 2007.

P.C.:

1. The submissions of the learned counsel appearing for the Petitioner were heard yesterday. The challenge is to the Judgment and Order dated 15th November, 2006 passed by the Executing Court by which a flat is ordered to be attached by the Executing Court in execution of the decree passed in favour of the first Respondent. The Petitioner is the judgment debtor.

2. The submission of the learned counsel for the Petitioner is that there is only an Agreement for Sale dated 15th July, 1998 executed by a builder jointly in favour of the Petitioner and his wife for sale of the flat which is subject matter of attachment and as an agreement creates no interests in an immovable property, the flat could not have been the subject matter of attachment. He submitted that the flat was jointly

owned by the Petitioner alongwith his wife and as the Petitioner's wife was not the judgment debtor, the flat could not have been attached. He critised the finding recorded by the trial Court that name of the Petitioner's wife has been incorporated at the behest of the Petitioner.

3. I have considered the submissions. The Agreement for sale dated 15th July, 1998 has been executed by the builder in accordance with the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of construction, sale, management and transfer) Act, 1963 and the Rules framed thereunder. Under the said Statute, the only mode prescribed for transfer and allotment of a flat is by way of a registered Agreement for Sale. It is pertinent to note that initially on the Application made by the Petitioner, the State Government had allotted a flat in the scheme of development undertaken by one M/s Ganpat Gaikwad of a different property. The order of allotment of the flat in dispute refers to the said earlier allotment made only in the name of the Petitioner. The order of allotment clearly shows that in lieu of the allotment made in favour of the Petitioner of a flat in the property developed by Shri Gaikwad, the flat subject matter pf attachment was allotted by the State

Government in the name of the Petitioner and his wife. On the basis of the order of allotment, an agreement has been executed by the builder in respect of the said flat. Thus, it is apparent that the original entitlement to the allotment of flat was only of the Petitioner and while allotting the flat in dispute in lieu of the flat which was earlier allotted to the Petitioner, the name of his wife has been incorporated.

4. There is no dispute that a money decree has been passed against the Petitioner which is not complied with by the Petitioner. I find no reason to interfere with the impugned order. Hence, Petition is rejected.

JUDGE